899.

SUPREME COURT OF THE UNITED STATES.

No. 188.

GEORGE R. SAMPSON AND LEWIS W. TAPPAN, MERCHANTS, DOING BUSINESS UNDER THE FIRM AND NAME OF SAMPSON & TAPPAN, CLAIMANTS OF THE SHIP SARAH, HER TACKLE, APPAREL, AND FURNITURE, APPELLANTS,

vs.

SAMUEL WELSH, JOHN WELSH, AND WM. WELSH, TRADING AS S. & W. WELSH.

APPEAL FROM THE CIRCUIT COURT U. S. FOR THE STATE OF PENNSYLVANIA.

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Gideon, Printer.

S. & W. WELSH
vs.
THE SHIP SARAH.

Pleas before the Honorable the Judges of the Circuit Court of the United States for the eastern district of Pennsylvania, in the third circuit, of April session, 1857, No. 13.

It is thus contained:

Pleas and proceedings before the honorable the judge of the district court of the United States, in and for the eastern district of Pennsylvania.

It is thus contained:

Be it remembered, that on the fourteenth day of August, A. D. 1856, John Fallon, esq., one of the proctors of said court, appears in said court, and exhibits the libel and complaint of Samuel Welsh, John Welsh, and William Welsh, trading as S. & W. Welsh, against the ship Sarah, in a cause of contract, civil and maritime; which, being read, is in the words following, to wit:

In the District Court of the U. S., in and for the E. D. of Penn'a.
In Admiralty.

S. & W. WELSH
vs.
SHIP SARAH.
Libel.

To the Honorable John K. Kane, Judge of the District Court of the United States, in and for the eastern district of Pennsylvania.

Samuel Welsh, John Welsh, and William Welsh, trading as S. & W. Welsh, exhibit this their libel against the ship Sarah, now lying at the port of Philadelphia, in the district aforesaid, and within the admiralty and maritime jurisdiction of this honorable court, whereof Capt. Albert Drinkwater now is, or lately was, master, her boats, tackel, apparel, and furniture, and against all persons lawfully intervening for their interest therein, in a cause of contract; and thereupon the libellants do allege and articulately propound as follows:

First. That the said vessel, on or about the first day of August, arrived at this port from Rio, in South America, with a cargo of six thousand bags of coffee, consigned to these libellants, and for which said consignment of coffee your libellants hold a clear bill of lading, a copy of which is hereto annexed, marked A; and that,

by virtue thereof, your libellants have received the said coffee of and from the said vessel, and now have possession of the same.

Second. That the said coffee, when so delivered to your libellants, was found to be in a damaged condition; and your libellants aver and verily believe that the said damage was not occasioned by perils of the seas, or by any of the excepted perils in the said bill of lading.

Third. That the said damage is estimated by your libellants to be about the sum of three thousand dollars.

Fourth. That your libellants have advanced and paid for the use and on the credit of said vessel, in payment of wages of the crew thereof, and necessary supplies, the sum of two thousand and ten dollars and seventy-four cents; a particular statement of which said disbursements is hereunto annexed, marked B.

Fifth. That your libellants claim to recover of and from said vessel, as aforesaid, the amount of damage done to the said consignment of coffee, and the amount of the disbursements made as aforesaid—less the amount of freight due on the said coffee, which amounts to the sum of about thirty-four hundred and sixty-five dollars.

Sixth. That the said vessel is a foreign vessel, not owned by parties residing in this State, and is a maritime vessel, employed in navigating the high seas.

Seventh. That all and singular the premises are true.

Wherefore your libellants pray that process, in due form of law, may issue against the said ship Sarah, her boats, tackle, apparel, and furniture, and that this honorable court will pronounce for the damages and disbursements aforesaid, and decree the same to be paid with costs, and for such other and further relief and redress as to right and justice may appertain, and as the court is competent to give in the premises.

JNO. FALLON,
Proctor for Libellants.

S. & W. WELSH,
BY JNO. WELSH.

On motion of J. S. S.—

Libel amended by inserting in the sixth line of the fifth article the words: "which would have been due on the said coffee if it had been delivered in good order," instead of the words: "due on said coffee."

John Welsh, one of the above libellants, being duly affirmed according to law, deposes and says, that the facts set out in the above libel are true, to the best of his knowledge and belief.

JNO. WELSH.

SHIP SARAH & OWNERS,

TO SAM'L AND WILLIAM WELSH, Dr.

For Disbursements, say:

July 28,	To paid	Capt. Drinkwater	$1,050 00
29,	"	entrance fees at custom-house	79 97
29,	"	inward pilotage	87 33
30,	"	Captain Drinkwater	300 00
31,	"	B. E. Carpenter's bill stores	70 65
Aug. 5,	"	tow-boat Atlantic, for towing	125 00
6,	"	Captain Drinkwater	50 00
8,	"	for copy of surveyor's report	1 75
9,	"	for filling water casks	10 00
9,	"	surveyor's fee	10 00
9,	"	Lennard & Co., for discharging	127 00
11,	"	Captain Drinkwater	50 00
			$1,961 70
		Commission, 2½ per cent	49 04
		Due S. & W. W., cash July 31st	$2,010 74

E. & O. E.

Philadelphia, August 14th, 1856.

S. & W. WELSH.

In addition to the above, there are bills to be paid, viz:

Cope Brothers, for wharfage	$48 00
J. Whetham & Co., for stores	62 44
	$110 44

M.					
No.	1	205	No. 23 48	No. 45	99
	2	168	4 102	6	71
	3	128	5 244	7	16
	4	73	6 125	8	21
	5	82	7 142	9	22
	6	12	8 48	50	380
	7	14	9 56	1	26
	8	94	30 104	2	64
	9	58	1 130	3	33
	10	49	2 121	4	95
	1	91	3 75	5	82
	2	69	4 185	6	54
	3	110	5 114	7	121
	4	60	6 156	8	88
	5	179	7 38	9	97
	6	61	8 28	60	95
	7	174	9 31	1	63
	8	21	40 195	2	51
	9	81	1 86	3	59
	20	69	2 53	4	84
	1	38	3 94	5	153
	22	92	44 83	66	36
	1932 B.		2258 B.	1810 B.	

6,000 bags coffee.

[L. S.] Shipped, in good order and condition, by Naylor Brothers & Co,, of Rio de Janeiro, in and upon the good ship or vessel called the Sarah, whereof Young is master, for this present voyage, and now lying in the harbor of Rio de Janeiro, and bound for Philadelphia, six thousand bags, containing thirty thousand arrobas net weight of coffee, being marked and numbered as per margin; and are to be delivered in the like good order and condition, at the aforesaid harbor of Philadelphia, (all and every the dangers and accidents of seas and of navigation of whatsoever nature or kind excepted,) unto Messrs. Samuel and William Welsh, or to their assigns. Freight for the said goods to be paid at the rate of fifty-five cents per bag of one hundred and sixty pounds net, with five per cent. primage, with average accustomed.

In witness whereof the master or purser of the said ship or vessel hath affirmed to five bills of lading, all of this tenor and date; one of which being accomplished, the rest to stand void.

Dated in Rio de Janeiro, 29th day of April, 1856.

Weight and contents unknown to

F. E. YOUNG.

UNITED STATES,
Eastern District of Pennsylvania, sct.

On this fourteenth day of August, A. D. 1856, before me, Charles F. Heazlitt, a commissioner appointed by the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, under the laws of the United States, to take affidavits and acknowledgments of bail, &c., personally appeared John Welsh; who being duly affirmed, did depose and say, that he has read the foregoing libel, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be on his information and belief, and as to those matters, he believes it to be true.

CHA'S F. HEAZLITT,
U. S. Comm'r.

And thereupon, to wit, on the said fourteenth day of August, A. D. 1856, the court having considered of the said libel, it is ordered and decreed that process of law do issue according to the prayer of said libellant in said libel set forth and contained, on compliance on his part with the rules of court in that behalf established, and that the stipulation on the part of the impugnant, if such there shall be, be taken in the sum of six thousand dollars, to answer, abide by, fulfil, perform, and pay, &c., according to the law and practice of this court.

And thereupon stipulation for costs is entered, in the words following, to wit:

UNITED STATES,
Eastern District of Pennsylvania, ss.

On this fourteenth day of August, 1856, and in the eighty-first year of the independence of the said United States, personally appeared John Welsh and Lewis C. Madeira, and by stipulation in due cause of law, acknowledged themselves to be indebted to the United States of America, for the use of all persons who may be interested in the premises, in the sum of two hundred dollars, to be levied of their goods and chattels, lands and tenements; on condition, that if the libellant in the above action shall pay all costs which, by the decree, mandate, or practice of the court, they may become liable to pay, then this stipulation to be void and of no effect; otherwise, to be and remain in full force and virtue, and execution to issue thereon forthwith for the amount of such costs, at the instance of any person interested as aforesaid.

JNO. WELSH,
L. C. MADEIRA.

Taken, acknowledged, and subscribed, this fourteenth day of August, A. D. 1856, in open court.

THOMAS L. KANE,
Clerk D. C.

UNITED STATES,
Eastern District of Pennsylvania, sct.

[L. S.]

John K. Kane, Judge of the District Court of the United States, in and for the eastern district of Pennsylvania.—To the marshal of the same district, greeting:

You are hereby commanded, in the name and by the authority of the United States, forthwith to seize and attach the ship or vessel called the Sarah, Albert Drinkwater, now or late master, together with all and singular her tackle, apparel and furniture, as the same now are, and the same safely keep, to abide the final order and decree of this court in a certain plea, civil and maritime, herein prosecuted against the said ship, &c., by Samuel Welsh, John Welsh, and William Welsh, trading as S. & W. Welsh, libellant, sur contract advances, &c.; and you are further commanded, in the name and by the authority aforesaid, to cite and admonish the said master, and generally all others herein concerned, so that they be and appear before me, at a special session of this court to be holden at the room of the district court of the United States, in the city of Philadelphia, on the twenty-ninth day of August inst., at eleven o'clock in the forenoon of the same day, then and there to show cause, if any they have, why the said ship, &c., should not be condemned, &c., for the payment of the damages and advances, &c.; and have you then there this writ.

Given under the seal of the said court at Philadelphia, this fourteenth day of August, A. D. 1857, and in the eighty-first year of the independence of the said United States.

THOMAS L. KANE,
Clerk Dist. Court.

On which said twenty-ninth day of August, A. D. 1856, being the day of the return of said writ, the said marshal makes return thereof as follows, to wit:

AUG'T 14, 1856.

Served the within writ, by reading the same to the master of the within named ship Sarah, and by leaving with him a copy of the same. So answers.

F. M. WYNKOOP, *U. S. Marshal.*
Per GEO. WYNKOOP, *Dep. U. S. M.*

(Endorsed:) U. S. district court—in admiralty. S. & W. Welsh vs. Ship Sarah. Attachment. Plea civil et maritime. Ret. 29 Aug., 1856. Stipulation, $6,000. Fallon.

Afterwards, to wit, on the eighteenth day of August, A. D. 1856, a claim is made and filed in the words following, to wit:

In the District Court of the United States, in and for the eastern district of Pennsylvania.

In Admiralty.—Plea Civil and Maritime.

S. & W. WELSH
vs.
SHIP SARAH.

And now, Albert Drinkwater, intervening for the interest of Sampson & Tappan, appears before the honorable court and makes claim to the said ship, her tackle, apparel, and furniture, as the same are attached by the marshal under process of this court, at the instance of S. & W. Welsh; and the said Albert avers that he was in possession of the said ship at the time of the attachment thereof, and that the persons above named are the true and bona fide owners of the said ship, and that no other person is the owner thereof; and the said Albert is master of the said ship, and the true and lawful bailee thereof for the said owner; wherefore he prays to be admitted to defend accordingly.

ALBERT DRINKWATER.

Sworn and subscribed in open court, this 18th day of August, A. D. 1856.

THOMAS L. KANE,
Clerk District Court U. S.

And thereupon stipulation is made in the words following, to wit:

UNITED STATES,
Eastern District of Pennsylvania.

Be it remembered, that at a special district court of the United States, holden at Philadelphia, in and for the eastern district of Pennsylvania, on the eighteenth day of August, 1856, and in the eighty-first year of the independence of the said United States, before the Honorable John K. Kane, judge of said court, come Albert Drinkwater and James Devereux, who, freely and voluntarily submitting themselves to the jurisdiction of said court, acknowledge themselves to be jointly and severally indebted unto Samuel Welsh, John Welsh, and William Welsh, trading as S. & W. Welsh, in the sum of six thousand dollars, lawful money of the United States, to be levied of the goods and chattels, lands and tenements of the said Albert and James, to the use of the said S. & W. Welsh. Upon condition, that whereas a suit is now pending in the said court, sur contract and advances, wherein the said S. & W. Welsh are libellants, against the ship Sarah, Drinkwater, master, and the said Drinkwater, bailee for Sampson & Tappan, claimants, now if the said claimants shall well and truly abide by all orders, interlocutory or final, of the said court, and

of any appellate court in which the said suit may hereafter be depending, and shall fulfil and perform the judgment or decree which may be rendered in the premises, and also pay all such costs and charges as shall be ordered and adjudged to be paid on their part, then this stipulation shall be void; otherwise, in force, and execution may issue by virtue thereof, at one and the same time, against any or all the parties to this stipulation.

ALBERT DRINKWATER,
JAMES DEVEREUX.

Taken, acknowledged, and subscribed in open court, on the day and year above written.

THOMAS L. KANE,
Cl'k D. C.

And thereupon it is ordered that a writ of restitution issue to the marshal, directing him to restore the said ship to the said claimant, upon payment to him of his costs and necessary expenses; which said writ of restitution is in the words following, to wit:

UNITED STATES,
Eastern District of Pennsylvania.

[L. S.] John K. Kane, judge of the district court of the United States, in and for the eastern district of Pennsylvania, to the Marshal of the same district, greeting:

You are hereby commanded to deliver and restore unto Albert Drinkwater the ship or vessel called the Sarah, with her tackle, apparel and furniture, or so much thereof as was lately and is now in your custody and possession, by virtue of a writ of attachment lately issued out of said court at the suit of S. & W. Welsh, libellants, sur contract, &c.; and how you shall have executed this writ, make return to me, at a special session of said court, to be holden at the city of Philadelphia, on the twenty-third day of August inst., at 10 o'clock, a. m.; and have you then and there this writ.

Given under the seal of said court, at Philadelphia, this eighteenth day of August, A. D. 1856, and in the eighty-first year of the independence of the said United States.

THOMAS L. KANE,
Clerk Dist. Ct.

On which said twenty-third day of August, A. D. 1856, being the day of the return of said writ, the said marshal makes return thereof, in the words following: "I have restored the ship Sarah to Albert Drinkwater, as by the within writ I was commanded." So answers.

F. M. WYNKOOP, *U. S. M.*
Per GEO WYNKOOP, *Dep. U. S. M.*

And Robert P. Kane and Geo. M. Wharton, esquires, also proctors of said court, come into said court, and exhibit the answer of Sampson and Tappan to the libel aforesaid; and the same being read and filed, is in the words following, to wit:

To the Honorable John K. Kane, Judge of the District Court of the United States, in and for the Eastern District of Pennsylvania—In Admiralty:

The answer and exceptions of George R. Sampson and Lewis W. Tappan, merchants of the city of Boston, doing business under the firm-name of Sampson and Tappan, to the libel and complaints of Samuel Welsh, John Welsh and William Welsh, trading as S. & W. Welsh, against the ship Sarah, her tackle, apparel and furniture, and against all persons lawfully intervening for their interest therein, in a cause of ; and thereupon the said George R. Sampson and Lewis W. Tappan allege and articulately propound as follows:

First. That these respondents are the true and lawful owners of the said ship Sarah, a vessel of the burthen of four hundred and fifty-four tons or thereabouts, and registered at the port of Boston.

Second. To the first article of said libel they make answer that the allegations contained therein are true, and that the copy of a bill of lading annexed to said libel, and marked A., is a true copy of the bill of lading under which the said libellants received six thousand bags of coffee of and from the said ship Sarah, as in said article is alleged.

Third. To the second article of said libel they make answer, that it is true that of the coffee consigned and delivered to the libellants as aforesaid, some one thousand and forty bags, or thereabouts, were more or less damaged by sea water, and that the same were so damaged whilst on board and forming a part of the cargo of the said ship Sarah. But that it is not true, as is alleged in said article, that the damage thereto was not occasioned by the perils of the sea or by the perils excepted in the bill of lading under which the same were received and delivered.

And further answering, these respondents allege as follows: That the said ship Sarah sailed from the port of Rio Janeiro on the 17th day of May, 1856, under charter to Messrs. Naylor, Brothers and Company, merchants of that place, and having on board a cargo consisting of six thousand bags of coffee, to be delivered at the port of Philadelphia. That at the time the said coffee was taken on board, and prior thereto, the said ship was a tight, staunch, and strong vessel, and in every way fitted and equipped, and found in every requisite for her voyage. That in the preceding month of November, the said ship being then in the port of Whampoa, had been well and thoroughly caulked, and that whilst lying in the

port of Rio Janeiro, prior to taking on board the cargo aforesaid, she had been examined both within and without by the said Messrs. Naylor, Brothers and Company, by whom she was pronounced seaworthy, and fit for its reception. That in the stowage of the said cargo, the vessel was thoroughly and properly dunnaged and matted, and every precaution taken for its safe preservation, and that after the same had been taken on board the hatches were battened down, caulked, and covered with tarpaulin.

That during the whole time that the said vessel was in hot climates, and exposed to the heat of the sun in the tropics, her decks were wet over their entire length twice a day, with a view to prevent the action of the sun opening her deck seams.

That at different times during the voyage from Rio Janeiro to Philadelphia, and more especially on the 11th, 12th, and 13th days of July, the said ship encountered tempestuous weather, in which she labored heavily, with very heavy seas running; that during the continuance of this weather the pumps were regularly attended to, and every measure taken for the safety of the vessel and cargo.

That on the 6th day of August the said ship arrived at the quarantine ground of the port of Philadelphia, and on the 29th day of the same month she was towed up to the city; and that subsequently, upon the discharge of her cargo, the same was for the first time discovered to be in a damaged condition as aforesaid.

And these respondents further allege, and so answer, that they believe the damage aforesaid to have been occasioned by the straining of the upper works of the ship, and the starting of her deck seams by the stress of weather to which she was exposed during her voyage to Philadelphia; and that the same could not have been due to the defective condition of the vessel, or to the neglect of those having charge of her, inasmuch as she was thoroughly recaulked at Whampoa, and all precautions taken thereafter to preserve her in a sound and tight condition, as has been already alleged.

Fourth. To the third article of said libel they make answer:

That they do not know the amount of the damage occasioned to the said coffee; but that they are informed and believe that the same is much less than is alleged in the said article.

Fifth. To the fourth article of said libel these respondents, without admitting that the matters therein alleged are either material or pertinent in this cause, make answer:

That they believe that the libellants, as consignees of the said ship Sarah, have made advances and payments on account thereof, amounting to the sum of two thousand and ten dollars and seventy-four cents, as in said article is alleged.

Sixth. To the fifth article of said libel these respondents except, in this, that they are advised that the same alleges two distinct substantive causes of complaint, which, by the principles of pleading, as well as by the rules of practice of this honorable court, may not be joined in the same libel.

Seventh. And these respondents further except to said libel, that the same is defective in form, and not in accordance with the twenty-third rule of practice of the courts of the United States, in causes of admiralty jurisdiction, in this, that the nature of the cause is nowhere stated therein, nor whether it be a cause civil and maritime, or a cause of contract, or of tort, or damage.

Eighth. That all and singular the premises are true.

Wherefore these respondents pray that this honorable court would be pleased to pronounce against the libel aforesaid, and to condemn the libellants in costs, and otherwise right and justice to administer in the premises.

GEO. R. SAMPSON,
For Sampson & Tappan.
ROBERT P. KANE,
G. M. WHARTON,
Proctors for Respondents.

DISTRICT OF MASSACHUSETTS,
Boston, September 24, 1856.

Then appeared before me Geo. R. Sampson, and made oath that the matters contained in the above answer, so far as the same are within his knowledge, are true, and so far as they are derived from the information of others are true, to the best of his knowledge and belief.

C. W. LORING,
Com. U. S. Circuit Court for the District of Massachusetts.

To the Honorable John K. Kane, Judge of the District Court of the United States for the eastern district of Pennsylvania:

Samuel Welsh, William Welsh, and John Welsh, co-partners, under the firm of S. & W. Welsh, libellants, in reply to the answer of the said George R. Sampson and Lewis W. Tappan to their said libel against the ship Sarah, her tackle, apparel, and furniture, present this their amended libel; and thereupon said libellants allege and articulately propound as follows:

First. That your libellants were not the general consignees of the said ship, in the ordinary legal acceptation of such terms.

Second. That by the general custom of merchants in this port and elsewhere, as far as these libellants are aware, there is a well-understood and universally recognised distinction between the inward consignees of a vessel, otherwise called consignees of the freight, and the outward or general consignees.

Third. That it is the general custom of merchants in the port of Rio de Janeiro, where this ship came from, and is a general custom throughout the mercantile world, as far as the libellants are aware, in chartering an entire vessel, to bargain for, and, if possible, to make the agents of the charterers, or consignee of the cargo, the inward consignee of the vessel at the port of delivery.

Fourth. That in pursuance of such general custom as aforesaid, the said ship Sarah was consigned to the "charterer's agents" as such, and not to these libellants by name, as inward consignees as aforesaid.

Fifth. That the duties and rights of such inward consignees are limited to directing the wharf or dock where the cargo shall be discharged, collecting the freight, and at the instance of the captain, the general consignee, owners, or other representative of the vessel, advancing such sums as may be requisite to pay off the hands, or other proper expenses, on the credit of the freight and of the vessel; for which services such inward consignee is entitled, in accordance with said custom, to a commission of two and a half per cent. on the freight and on money advanced before the freight is earned.

That the inward consignee has no control or authority over the vessel than as aforesaid; and that his authority or relation to the vessel such as aforesaid is completely terminated when the cargo is discharged.

Sixth. That these libellants had not had any business relations or intercourse with the owners of the said ship before her arrival in the port of Philadelphia aforesaid; that they have not represented the said owners, or acted as their consignees of this or any other ship of theirs, and have since had no business relations with them.

Seventh. That while the said ship Sarah was consigned inward to the libellants as aforesaid, James Devereux, a well-known merchant of this port, acted as the representative of the vessel and owners; and, although the ship was advertised for sale by a firm of ship brokers, James Devereux was understood to be the consignee after the discharge of the cargo, and at the time of the attachment.

Eighth. That before the said "Sarah" was libelled, these libellants had several communications with a special agent of the owners and the said Devereux & Son, on the subject, as jointly representing the owners; and libellants informed the said representatives of the ship and owners that, unless the money advanced by them to the captain was settled, they would have to libel the ship before she left port; and that the owners of said ship, as is believed at the instance of the said Devereux, or in consequence of what was written to them by the captain or by said Devereux, sent the special agent above referred to to Philadelphia, to endeavor to set-

tle said claim with libellants; who, the said special agent, was in Philadelphia before and at the time said libel was issued.

Ninth. That the said ship Sarah concluded discharging her cargo at Cope's wharf, on Walnut street, on or about the eighth day of August, A. D. 1856; that after that time the libellants ceased to have any control whatever over the said ship; and that as soon as the cargo was so discharged, she was, by the order of the general consignee or captain, taken to some other wharf, where the libellants do not know, nor do they know at what wharf she was when she was libelled by them.

S. & W. WELSH.

In the District Court of the United States, in and for the eastern district of Pennsylvania.—In Admiralty.

S. & W. WELSH vs. SHIP SARAH. } Contract.

Depositions of witnesses on behalf of libellants, taken before Chas. F. Heazlitt, United States commissioner, at Philadelphia, September 11, 1856.

Mr. J. S. Serrill, for libellants.
Mr. R. P. Kane, for respondent.

Written interrogatories waived.

Silas Pedrick, being duly affirmed, says:

I am one of the marine surveyors of the port of Philadelphia, appointed by this court, and have been so about eighteen years. We made a survey of the cargo of ship Sarah, on or about the 7th August, 1856, and made a report; the report was made 7th August; the cargo was coffee. The bulk of the damage was the tier of bags next below the upper deck. It was the upper tier of bags; then the ground tier of bags on the lower deck. The vessel had two decks; she is a double deck vessel; then this upper tier of bags under the lower deck. Now, the sides generally, all the way down from the upper deck to the kelson, all the bags were damaged badly; promiscuously through the cargo there was more or less damage; most of it about the hatches, where the water had gone round the combings of the hatches—it had followed its way down to the skin of the ship. The seams around the combings of the hatches seemed more open than any other part of the ship, and extended further into the cargo; the seams of the main combings of the upper deck, and the combings of the hatch of the lower deck, were particularly open round the hatch; that is the foundation of the damage. The water-casks were on the lower deck, abaft the after hatch, I think, stowed in tiers. The coffee was stowed in tiers, properly stowed—could not have been stowed better. There

was coffee forward and abaft the water-casks; I think there was some aft. The bags in the centre of the hold *was* not so much damaged as in the sides, except under the combings of the hatches I have spoken of. It was there damaged clear down pretty much, from immediately beneath the combings of the hatch down to skin of the vessel. There was more or less damage in the hold forward; we didn't examine the seams with a caulking iron, but we saw the marks of the water where it had gone through the wood; every seam showed where the water came down. Around the combings of the main hatch you could see the rain water coming down. I saw where the water had run down around the combings of the main hatch; this was after the cargo in the lower hold was out. The agent of the ship came on, and asked about going down on board the ship. I told him if he was prepared to go down with a calking iron and mallet, I was prepared to go with him; that is the last I heard of him.

What was the condition of those seams, so far as your observation extended?

They were evidently very open, from the quantity of water that had gone through them. I don't recollect about the ship being painted after her arrival here.

To what cause do you attribute this damage?

To the want of recalking, as we have signed it. That was our judgment. There was very little damage from "blowing." This damage would be in the bilges; it would not go much above the bilges in blowing; you could see where it trickled down through the seams. I don't know that there was any damage from the water-cask.

Cross-examined.

The bags, as numbered in the report, are the only ones I found damaged; I took those only that were stained. The seams that appeared to be very open were around the combings of the main hatch of the upper deck, and the combings of the after hatch of the lower hold.

If the vessel had been exposed to heavy weather in her voyage, such as had strained her upper works, would not this have sufficed to start the seams to which you have referred?

The upper works, where the leverage is, would strain the waterway seams particularly, and round the combings of the hatches and the combings of the mast. The water-way seams will be apt to leak in a gale of wind; but we don't consider that the body of either deck is going to strain in a seaworthy vessel. I have been to sea for years, and have made East India voyages.

Q. Is it usual for a ship, such as the Sarah, in a fifteen months' voyage from this country to Whampoa, and home by way of Rio,

to be recalked, by way of precaution against leakage from the causes you have specified?

A. I should say that a ship ought to be calked before the cargo was put in, being in such a warm climate.

Q. In your judgment, would one recalking, say at Whampoa, seven months out, be sufficient?

I should think not.

Why not?

A deck would leak in four weeks in such a hot sun as Canton or Rio, if it is not properly attended to; that means wetting down night and morning, very carefully. If properly attended to, it ought not to leak.

Would not, then, the recalking at Wampoa, to which I have referred, be sufficient, if the decks were properly attended to?

I should think it would in an A 1 ship. There is a great deal of difference in the calking of ships.

Q. Supposing the ship Sarah to have left this country in May, 1855, about the middle of May, to have arrived at Singapore 1st September following, and to have proceeded from thence to Hong Kong and Whampoa, delivering cargo at these ports during the months of October and November following, and that whilst lying at Whampoa, about the 17th of November, she had been recalked, and that afterwards she had proceeded to Rio, arriving there eighty-four days after leaving Whampoa, without accident or injury, her decks whilst exposed to the hot weather having been attended to in the manner you have indicated, would it have been usual or necessary for the master of that vessel to have had her again recalked before taking in cargo at the port last named?

It would have been necessary, I think, to have tried her seams—upper works.

Question repeated.

I should think it would in that ship.

Why?

She is a ship some fourteen years old, as I have understood by the inspectors of ships. I don't consider her an A 1 ship. I was told she was in the neighborhood of fourteen years old.

There is a half grade difference between an A 1 ship and an A 1½. An A 1 ship is considered as good a ship as you can build, and an A 1½ is not so good by half, taking the grade.

Q. I wish to know what you mean by the half?

That is the grade I explained to Mr. Kane. The ship is not properly built, in the first place, to constitute her an A 1 ship.

You speak of the rating by the board of underwriters of this city?

I do—and of the board of inspectors.

Is the grading in New York and Boston based on the same principles as the board here?

I think not. Every inspector grades according to his own judgment.

I mean to say that this was not an A 1 vessel, according to my judgment.

Then do I understand you to say that this vessel was not built properly in the first place?

That I can't say.

How many grades of vessels do you have?

From A 1 to B 1, between which grades are ½, A 2, A 2½, and A 3—that is by our rating in Philadelphia. There is no other grade after B 1. That amounts to condemnation.

How would you rate the Sarah?

I would have put her A 2, from what I seen of her, if I had been the inspector.

An A 2 vessel may be perfectly sea-worthy, and fit for the coffee trade, may she not?

I do not think an A 2 vessel would be.

In what respects was she defective?

I do not know that she was rotten anywhere.

Do you know of what material she was built?

I do not.

Was she in good state of repair?

That I can't say.

I didn't try those seams to which I have referred with a calking iron. I did not try any of the seams. I don't know what the others might have done.

In grading vessels, do you consider their age?

Their age is considered, and the manner in which they are built.

An old vessel properly kept in repair may be perfectly sea-worthy as ever, may she not?

Properly kept in repair, yes, sir; until the iron fastenings give way, you can keep a ship up. I have been in a ship twenty-five years old—the ship Reaper, of Philadelphia. She had been new topped.

I should think the model of the Sarah was very easy. She was an old-fashioned ship, an easy model at sea. I mean a deep vessel with narrow beam. They don't roll so heavy or strain so much in the upper works.

Q. As to whether the ship Sarah had been recalked or not during her last voyage, you have no knowledge?

No, sir; I don't know anything about it. Capt. Gulager and Capt. Rogers are regular surveyors here, and were not in the ship Sarah on her last voyage. They were on board of her at the wharf.

The cargo was well dunnaged, matted, and well stowed. The dunnage was better than any cargo of coffee I ever saw come into this port.

Re-examined.

Q. In reference to the last calking at Whampoa, would not its sufficiency depend on what was the contemplated voyage and cargo—that is, its sufficiency for the whole coming voyage?

It would depend a great deal on the kind and weight of cargo she was going to take in, and something on the length of the voyage.

Q. Might not a ship be properly calked to carry a cargo of Coolies, and yet not be in a proper condition to carry a cargo of coffee?

There would be a difference of the cargo in weight. Coolies are generally so greasy you can't damage them with salt water; but coffee you might.

Q. Suppose a vessel proceeding from Whampoa to Rio with a cargo of Coolies, intending to take at Rio a cargo of coffee for this port, what sort of an examination of her seams would be prudent and proper, with a view of the necessity of re-calking, prior to taking a cargo of coffee at Rio?

I should not have examined the seams so closely having a cargo of Coolies, a light cargo, which would not strain the ship equal to a heavy cargo.

Q. That is not an answer to my question. (Question repeated.)

Q. By examination of the seams I mean merely looking at them, or trying them with a calking iron.

I don't understand the question.

Q. In such case would it be a proper or prudent examination merely to sail round the outside of the vessel in a boat, so as to judge of her seams and condition?

I should think not; not any more than in a ship going there in ballast. Coolies could not do any thing to injure the vessel, unless they cut a hole.

Examination by a calking iron is the only way you can ascertain the condition of the seams; and I should think that would be a very poor examination made by sailing round in an open boat.

Q. In deciding whether it would be safe to take a cargo of coffee from Rio to this port, would it not be necessary to examine her with a calking iron, or at least prudent to do so?

I should think it would have been prudent to have tried her.

More so than if you were going to take a cargo of Coolies?

I don't know whether it would or not. A Cooly would not want to have the water coming down on him any more than the coffee. The numbers in the report has reference to stained bags.

Q. After a passage of 84 days from Whampoa to Rio, would it not be advisable to make an examination of the seams prior to taking in a cargo of coffee?

It would be prudent to do so. By trying the seams you could tell whether she wanted calking or no.

Re-cross-examined.

When a shipwright is ordered to calk a vessel, the understanding is she is to be fit for any trade; and when she is properly calked she is fit for any voyage.

SILAS PEDRICK.

Affirmed to and subscribed, Sept. 11, 1856.

CHAS. F. HEAZLITT,
U. S. Commissioner.

Charles Bentrick, being duly sworn, says: I am an employing stevedore. I was present at the opening of the hatches of the ship Sarah, in August last. Her cargo was coffee. The coffee was stowed in tiers on the two decks, the lower and upper deck. Some of it was damaged. Some of the damaged bags lay under the main hatch, after hatch, forward hatch, and some few in the sides. The principal lot of the damaged bags were under the after hatch in the lower hold, and in the between decks abaft the after hatch. There was no coffee stowed between decks under the after hatch, but it was in the hold under the after hatch. The water casks were stowed on the between decks abaft hatch. There was not a great deal of it damaged on the sides of the between decks. On the between decks the principal part of the ground tier was damaged; in the hold we found some coffee damaged, in the wings, in several places, fore and aft the ship. Some of the bags were very badly stained, some were lightly stained, some were rotten, and some the whole side out of the bag. I should attribute the damage in the after hatch in the lower hold to the leakage of the casks that stood between decks; in the forward hatch the same; I can't say how as to the main hatch. All the damage was in the one corner, the larbord side of the after hatch. The covering of the hatch seemed perfect. I noticed the seams of the vessel.

Did you notice the seams of the vessel?

Yes, sir.

State their appearance from your observation of them.

I examined the seams with a knife, and to all appearances they were tight; but subsequently discovered water had leaked down on the starboard side from the upper deck.

How do you know that?

Because the bag underneath was wet.

Did you notice the bag being wet right along in the direction of the seam?

It was right under the seam.

Did you at the time of raining notice the rain coming through?

Yes; that is the time I have reference to.

Did you notice that any bags under the seam had been wet and had dried?

No, sir.

Were all the damaged bags that you noticed wet?

No, sir.

Those bags that were under the middle deck, did you notice how they had been wet or damaged?

Except in the hatches, I couldn't form any correct opinion.

Was there any water casks forward?

Yes, sir.

How were the bags laid round them?

They were not laid round them at all.

Were they near them?

They were stowed within two or three feet of them. The ground tier of those were damaged.

How was it in the holds? Was there greater or less damage than between decks?

I should think there was more between decks

Those bags damaged in the hold forward were under the water casks, were they not?

(Mr. Kane objects, as leading.)

Some of them. I have already answered that question.

Cross-examined.

I observed a defect in the condition of these water casks. One was partly out, and the signs indicated it had been leaking for some time. Some of the others were likewise defective, but not so badly. There might have been, to the best of my knowledge, four or five defective. Some of these were forward and some aft. I think there were rising twenty casks in all.

Those that were defective would contain from 160 to 175 gallons each.

By the sound of it I should judge the most defective one was half empty; one was leaking at the time I saw them; I think there were five or six defective. They were not leaking at the time I saw them; there was nothing in them to leak out; they were empty; only one of them appeared to have water in it, and it was leaking at the time I saw it. What I would call defective were shackling casks—old casks. To all appearances they were properly stowed. These empty casks were dry; I can't say how long they were empty; I don't know, except from hearsay, whether they ever had water in them. I attributed the damage to some of the bags of coffee to leakage from this cask; those bags were in the between decks, ground tier. There were a great number—more than sixty; there may have been one hundred. There were a great number; I can't say how many; some of them were very badly damaged, and some not so badly. The seam that was leaking might have been five feet from the starboard side, some ten or twelve seams; I should think nearly under the house; it was the seam joining the caboose house, I should think. I didn't notice

any other leaking seams on the upper deck. The principal part of the damage was under the three hatches. The damage was in the after corner, on the larboard side of the main hatch. On the after part of the after hatch damaged down nearly to the kelson and the forward part of the fore hatch. The main hatch was battened down. The after hatch had a booby hatch over, not battened down; the after hatch was off. This was the hatch they went down for provisions and water, &c. I think there is a house from the foremast to within four feet of the main hatch, on the forward deck. I was employed during the discharge of the cargo; I was employed by the master of the ship.

CHARLES BENTRICK.

Sworn to and subscribed, Sept. 11, 1856.

CHAS. F. HEAZLITT,
U. S. Commissioner.

John Kelly, being duly sworn, says:

I was present when the cargo of the Sarah was broken out. I was on deck when they took off the hatches. The cargo was coffee, in bags. When they took the hatches off, I observed in one corner of the main hatch there was a bag completely rotted. As they proceeded down there was a large quantity of damaged coffee came out, so much so that I was obliged to have three or four sailmakers to patch up the bags to enable the men to get them out of the ship. There were also three or four men gathering up the coffee; and some of it was so badly damaged that it was useless to put it into bags, and it was thrown away. The first day's discharging they discharged all that was forward of the after hatch, all the between decks, except what was abaft the water casks between decks. After the men had done, and once or twice while they were at work, I went down below; but after they were done, I could see what appeared to me to be a great deal of water that had run out of the casks in the forward and after hatch. There was a good deal of damage on the sides of the vessel and forward, and there was water running on the deck. I called Capt. Pedrick's attention to it, because I thought some of the damage arose from that. One of the casks was still running, and proceeded to the forward hatch, going into the lower hold, where the most damage was about the after hatch and the forward hatch. There was some of the bags of the coffee left between decks, and in one day's rain many of them were saturated with water where it came through the decks; and one day when I had some men at work below I put a spar across the hatch, with a tarpaulin over it, and I was obliged to put a tarpaulin over the coffee below. The water was coming through the decks—that is, when I was gathering coffee between decks. I don't know the number of water casks. There was one tier forward and two aft—I think between decks. I saw one near

the forward hatch, between decks, leaking. I had some bags taken out of that hatch, rotten. Between decks, forward part of it, was slimy, just. The main hatch appeared to be covered in the usual way; but the after hatch was open, and appeared to be opened. There are many vessels carry a booby hatch, and this had one of them. The coffee in the centre of the hold was about the best of it. The best part of the coffee was forward of the main hatch, in the lower hold, where it had the protection of the house on deck. The seams on deck appeared to be very open.

Cross-examined.

The stevedore, Bentrick, helped to put the covering over the hatch in the rainy weather. The object of the covering was to allow light to those repairing the bags, and to have the coffee picked up. The tarpaulin was placed on the coffee below, to keep it from the rain and drippings from the deck. Mr. Bentrick helped me to lay this tarpaulin. I observed some of the decks leaking: that is, I saw the coffee underneath wet, and the seams were open. I saw the bags underneath wet. I can't tell whether there was more than one seam open. The impression I had then was, that she leaked pretty generally on deck. I observed several bags wet, and they were wet from several seams. The boards are narrow, and one bag would take several of them. The bags were wet with rain water on the starboard side; I can't say how far from the side—a short distance. I did not observe, during the rainy weather any other seams, but my attention was called to them after the rainy weather. Those were the only seams I observed. This seam was a very short distance from the main hatch, between the ship's side and the caboose. I was not down there when they were discharging cargo at first. The cargo was most damaged the forward part, forward of the main hatch. I did not observe what part of the main hatch the most damage was. The damaged or leaky water cask that I saw was forward; I saw it leaking. I think some of the others must have been leaking, there was so much damage done where they were. The cask that was leaking appeared to be old—they all appeared to be old; I did not examine them particularly. The leaking did not appear to be from a blow; I thought it was from natural causes—old age. It was leaking at the foot of the cask. I can't say how many bags were damaged by this leakage—I can't tell—there were several; I can't say whether over or under fifty. When it came to twenty, or above twenty, I call it a good many. I didn't observe any of the water casks stowed aft leaking. Where they were was very damp, and the water seemed to come from their direction into the after hold. One batch was stowed forward the fore hatch, and the other aft the after hatch. There appeared to be double the quan-

tity aft there was forward. The barrel I saw leaking was near the forward hatch, just a little forward.

JOHN KELLY.

Sworn to and subscribed, Sept. 11, 1856.

CHAS. F. HEAZLITT,
U. S. Commissioner.

SEPTEMBER 12, 1856.

Present, Mr. Serrill and Mr. Kane.

Lewis C. Madeira, being duly sworn, says:

I was present.

Q. Were you present at the opening of any of the hatches of the ship Sarah?

I went on board shortly after the main hatch was opened. I suppose there was 100 to 150 bags discharged at that time. I noticed that a large number of the bags stowed in the after part of the main hatch was badly damaged, seemingly as far down as to the deck. The ends of the bags in the whole tier were stained and damaged. This was on the larboard side. That is the substance of the damage I saw in the cargo before it was disturbed. My business does not require me on board, and of course I was not there a long time.

What was the position of the injured bags with regard to each other?

The four corners of the bags, as they approached each other in the tier, was damaged all the way down as far as I could see, nearly to the deck.

What was the character of the injury? What did it appear like?

The bags were badly stained; the coffee black, and very much discolored, some of the ends being burst open.

Were these stains confined to one corner of the tier of bags? Was there any in the next corner?

I did not notice any, except each corner of the four bags as they came together, and they were under the after part of the main hatch on the larboard side. I only want to allude to one spot, and there I saw the damage as far down as I could see.

I was not in the hold of the vessel. There was a great deal damaged, but where it was stowed I don't know.

That I have described was in the between decks, near to the main hatch.

Cross-examination declined.

L. C. MADEIRA.

Sworn to and subscribed, Sept. 12, 1856.

CHAS. F. HEAZLITT,
U. S. Commissioner.

Mr. Serrill offers in evidence charter-party between F. E. Young, master of ship Sarah, and Naylor, Bros. & Co., dated 23d April, 1856, A. A.

Bill of lading, 29th April, 1856, marked C. C.

M.					
No.	1	205	No. 23 48	No. 45	99
	2	168	4 102	6	71
	3	128	5 244	7	16
	4	73	6 125	8	21
	5	82	7 142	9	22
	6	12	8 48	50	380
	7	14	9 56	1	26
	8	94	30 104	2	64
	9	58	1 130	3	33
	10	49	2 121	4	95
	1	91	3 75	5	82
	2	69	4 185	6	54
	3	110	5 114	7	121
	4	60	6 156	8	88
	5	179	7 38	9	97
	6	61	8 28	60	95
	7	174	9 31	1	63
	8	21	40 195	2	51
	9	81	1 86	3	59
	20	69	2 53	4	84
	1	38	3 94	5	153
	22	92	44 83	99	36
	1931 B.		2258 B.	1810 B.	

6,000 bags coffee.

[L. S.] Shipped in good order and condition by Naylor, Brothers & Co., of Rio de Janeiro, in and upon the good ship or vessel called the Sarah, whereof Young is master for this present voyage, and now lying in the harbor of Rio de Janeiro, and bound for Philadelphia, six thousand bags, containing thirty thousand arrobas net weight of coffee, being marked and numbered as per margin; and are to be delivered in the like good order and condition, at the aforesaid harbor of Philadelphia, (all and every the dangers and accidents of seas and of navigation of whatsoever nature or kind, excepted) unto Messrs. Samuel and William Welsh, or to their assigns. Freight for the said goods to be paid at the rate of fifty-five cents per bag, of one hundred and sixty pounds net, with five per cent. primage, with average accustomed.

In witness whereof the master or purser of the said ship or vessel hath affirmed to five bills of lading, all of this tenor and date; one of which being accomplished, the rest to stand void.

Dated in Rio de Janeiro, 29th day of April, 1856.

Weight and contents unknown to

F. E. YOUNG.

In the District Court of the United States, in and for the eastern district of Pennsylvania.—In Admiralty.

S. & W. WELSH
vs.
SHIP SARAH. } Contract, &c.

Depositions of witnesses taken on behalf of Respondents, before Chas. F. Heazlitt, United States Commissioner, at Philadelphia, August 19, 1856.

Mr. Jno. Fallon and Mr. Serrill for libellants.

Mr. G. M. Wharton and Mr. R. P. Kane for respondents.

Written interrogatories waived.

Albert Drinkwater, being duly sworn, says:

I am master of the ship Sarah. I was appointed master the 14th May, 1856, at Rio de Janeiro, by the American consul, Robert G. Scott. Capt. Francis Young was formerly master of the ship. On the first day of May the ship was ready for sea. On that day Captain Young was taken sick with the yellow fever. He was sick twelve days, and on the twelfth day he died. On the 14th I went on shore, and was by the American consul appointed master. The ship had come to Rio from Whampoa. Capt. Young was master at Whampoa and on the voyage to Rio.

At Whampoa the ship was thoroughly calked by shipwrights. I don't recollect the name of the firm, but they were of high standing. She was calked by the direction of Capt. Young. The voyage from Whampoa to Rio was eighty-four days; the passage was fair. We had rough weather in the China Sea, the first part. Our cargo was 375 steerage passengers with their provisions; our ballast was sand and stone, the usual ballast. We arrived at Rio the 18th of March. The vessel was in a good condition when we arrived there. We were under charter from Rio to Philadelphia. The charterers were Naylor, Bros. & Co. Several days before we commenced loading there was a gentleman came off and examined the ship throughout, [and I was told by Capt. Young—] (objected to.) I don't remember seeing that gentleman afterwards. I saw him before that; he had been on board the ship before. I don't remember hearing him addressed by name. He resided at Rio. I don't know where was his place of business; I don't know who he was, nor by what name he went. I conducted him through the ship; Capt. Young was not with us. There was an examination made by him of the exterior of the ship. When he parted with me he said he thought the ship was in good condition to take a cargo of coffee. He went round the outside of the ship in a boat. I was the mate at the time of this visit. We left Rio on the 17th. Up to the 14th, as mate, I kept the log. For the first ten days out of Rio we had strong breezes and heavy rain squalls, and most of the time we

were under double reefed topsails; from that, until in the latitude of ten degrees north, we had pretty good weather; light winds and frequent rains; from that until about twenty-five degrees latitude, we had variable weather; from that time until a few days before I arrived at the Capes we had strong breezes, and some of the time a very high sea on; the remainder of the passage was fair. Our pumps during the voyage were in good condition; they were attended to frequently. She made but very little water; no more than usual. We tried the pumps twice every twenty-four hours in moderate weather, and in rough weather four times in twenty-four hours.

We arrived at our wharf, in the city of Philadelphia, on or about the 28th July. We were in quarantine 13 days. At quarantine she made no more water than usual. We tried the pumps there about every other day. We discharged cargo here, and found it damaged. The vessel, after the cargo was discharged, was in good condition, making very little water; no more than usual.

(Mr. Kane offers in evidence, log.)

After we took in our cargo at Rio the hatches were barred down, calked and pitched, and tarpaulined. My new mate entered on his duties the night of the 16th of May.

With the exception of the entries in the log marked with the captain's name and the purser of the ship, I made all the entries previous to the 16th in the log-book. I made an entry in the log every twenty-four hours, at noon. The entries were first made upon a slate, and were copied from that slate. During the time the log was kept by others I was sick with the fever and ague.

Examine the entries of the 15th, 16th, and 17th November, 1855. In whose handwriting are they?

In mine, and were entered in the manner I have described. The facts detailed therein, as to the calking of the vessel at Whampoa, are within my own knowledge, and I remember them. We took rice and cotton from Singapore to Whampoa. The voyage was twenty-three days to Hong Kong from Singapore. We discharged part of the cargo at Hong Kong. The cargo discharged at Hong Kong and Whampoa came out in good order, not any of it damaged. On our previous voyage, we encountered as severe weather as we did from Rio to Philadelphia. We had a severe gale off the Cape of Good Hope, which lasted several days. The ship labored very heavy most of the time on the voyage from Rio to Philadelphia, during the bad weather. We shipped but very little water.

Q. In your opinion, sir, how was the damage to cargo on the voyage from Rio to Philadelphia occasioned?

(Objected to by Mr. Serrill, that it is matter of opinion.)

It was occasioned by stress of weather. I think the ship strained in her upper works.

Cross-examined by Mr. Serrill.

I shipped as mate in this vessel at Boston. We left Boston 21st May, 1855, bound for Singapore, in ballast. We had rough weather about the Cape of Good Hope for two or three weeks. For three or four days we had very heavy gales. We arrived at Singapore 17th September, and remained there until the 2d of October, whence we sailed, with a cargo of rice and cotton, to Hong Kong, where we arrived in twenty-three days. We remained there from the 24th to the 30th of October; thence to Whampoa with a cargo of cotton and rice. We were two days on the passage. We arrived on the 1st of November. We sailed from Whampoa on the 26th December. The calking at Whampoa commenced on the 15th and ended on the 17th of November. She was calked throughout—outside, deck, staunchion, water-ways—every part. We then took in coolies from there to Rio, where we arrived in eighty-four days. We had nothing but coolies and their provisions, and ballast. The weather, coming down the China Sea, was rough. We had thirteen days coming from Whampoa to Angier. During those thirteen days we used the pumps the same as we always had, twice in twenty-four hours, for all the passage. It is usual to try the pumps twice in twenty-four hours. It was merely the trial of the pumps. At the examination in Rio the party making the examination was in the hold and on deck of the vessel. He was there about two hours, only once, to my knowledge. He rowed round the outside of the vessel in a boat. He did not touch the side of the vessel with a calking-iron, but he did with his knife. I was no the boat with him, but I saw him do so from the deck of the ship. He did not try the seams on deck with a calking-iron, but he did with his knife.

The effect of a long passage in the tropics is, that if you don't keep a vessel well wet down, they are very likely to dry up and and open—that is, the seams. That is the custom; and in very warm weather they are wet down twice a day, morning and evening. I informed the person that made the examination what had been the cargo to Rio.

I have got the charter-party here, and present it to counsel. I do not know any of the firm of Naylor, Brothers & Co., the charterers. The contract was formed by Capt. Young. I only know Capt. Young of all the parties named in the charter. There was nineteen chests of tea, besides the coffee, on board. We stowed the coffee on dunnage and mats, in the hold and between decks. The tea was stowed between the water casks and the coffee, between decks, in the space left between the water casks and the coffee. Some of the water casks were stowed forward and some amidships. There were five forward and thirteen aft the main hatch, the place where they usually stow water casks, (the coffee in the bow of the vessel.) There was no coffee forward of the

foremast, and those five water casks were forward of the foremast; the thirteen other casks were aft the main hatch. Between the foremast and mainmast there was coffee stowed. Those thirteen water casks were aft the mainmast. There was nothing between the mainmast and water casks, except some barrels of provisions. The tea was stowed abaft the water casks—nineteen chests; then came coffee again. The first ten days of the passage we had rough weather. The middle of the passage, until ten degrees north, we had variable winds and frequent rains—nothing of a storm. We had no occasion to do more than try the pumps. We were fifty-eight days to quarantine, and we were there thirteen days.

I was present when cargo was broken on board the ship. The hatches were taken off at quarantine by the health officer. They remained off while we lay there in the middle of the day; at night they were put on and tarpaulined. During the whole voyage from Rio here we had not any water of any account in the hold—the same as usual.

When the hatches were taken off, in the centre of the hatch the cargo was perfectly dry. After discharging some, we found some bags stained on the after hatch, in the after corners, somewhat between decks, under the hatch. We found bags stained all about the ship—some in the middle, and some at the sides. The stain was of dark color, and was made by salt water, I think. Bags stained by salt water are darker than those stained by fresh, generally. Nothing has been done to the vessel since she has been here in the way of calking.

There was no stain on the boxes of tea. The tea belonged to me.

Re-examined by Mr. Kane.

I don't remember how many men were at work calking; there were about thirty. The decks of the ship, while we were in the tropics, were wet once a day, and in warm weather twice a day—once in the morning and once at night. The ship was wet outside the same.

The water casks were stowed in the usual place. The tea was put on board at Whampoa for passengers' use. It was entered as stores. I mean, by passengers, the coolies. I did not leave it at Rio. I couldn't sell it. I endeavored to do so.

Re-cross-examined.

When you returned, what was the observation you made to your consignee as to the nature of your voyage, when they asked you the usual questions as to the passage, &c.?

I said we had a fair passage, and some heavy weather the latter part of it, while we were in the Gulf. My vessel and cargo were consigned to Messrs. Welsh.

ALBERT DRINKWATER.

Sworn to and subscribed, August 19, 1856.

CHAS. F. HEAZLITT,
U. S. Commissioner.

Charles Knutson, being duly sworn, deposes and says:

I was mate of the ship Sarah on her late voyage from Rio. I shipped at Rio. We left Rio 17th May, 1856. I entered on my duties the 16th May. Our cargo was all coffee. Our hatches were calked down, pitched, an iron bar on top of it, and a tarpaulin on top. We had fifty-seven days' passage. We had a great deal of rain; and in very dry weather we generally wet the decks twice a day. The first eight or nine days we had a very strong breeze coming out of Rio—a northerly wind, head wind. Subsequently, on the 11th, 12th, and 13th of July, we had very strong gales—southerly wind. These gales, on these days, strained the ship a good deal—strained her all over. We lay in quarantine thirteen days. We had fine weather every day we were at quarantine.

I kept the log-book from the time I was mate. I made the entry every twenty-four hours, at noon. I made the entries in the book from the log-slate. I made the entries on the slate every four hours.

Examine this book, (log,) from the 17th day of May on to its close, and say by whom the entries were made.

I did. They are in my handwriting, except when I was sick, which was five days—28th, 29th, 30th, and 31st of May, and 1st of June. Capt. Drinkwater made those entries. I made the entries of 11th, 12th, and 13th July. The facts stated there are true. We lay at quarantine from 16th of July to the 29th of July, when we towed up. I make the same remark as to the truth of these entries as I made of the others.

The hatches were off at day time to get air down, but then they were fastened down at the night time.

Cross-examined by Mr. Serrill.

I am a German by birth; have followed the sea as first mate thirteen years. We had strong gales during the passage; the last three days, the 11th, 12th, and 13th days of July, were strong gales.

CHARLES KNUTSON.

Sworn to and subscribed, August 19, 1856.

CHAS. F. HEAZLITT,
U. S. Commissioner.

Mr. Kane offers in evidence log-book of the ship Sarah, and more particularly the entries referred to by the witnesses.

The charter-party was produced on the call of Mr. Serril, and was offered in evidence.

District Court of the United States for the eastern district of Pennsylvania.

S. & W. WELSH,
vs.
SHIP SARAH.

UNITED STATES OF AMERICA,
District of Massachusetts.

Be it remembered, that on the 17th day of December, in the year of our Lord eighteen hundred and fifty-six, at Boston, in said district of Massachusetts, before me, C. P. Curtis, jr., a commissioner in and for the district of Massachusetts, to take affidavits and bail in civil causes depending in the courts of the United States, appointed by the circuit court of the United States for the first circuit, under the acts of Congress in such case made and provided, personally appeared Geo. W. Brown and Charles Pearson, of Boston, witnesses of sound mind and lawful age, witnesses for the respondents in a certain civil suit depending in the district court of the United States in and for the eastern district of Pennsylvania, wherein S. & W. Welsh are libellants vs. Ship Sarah; and the said Brown and Pearson being by me first carefully examined and cautioned, and sworn to testify the whole truth relative to the issue, did depose and say, in answer to interrogatories annexed, as follows, viz:

E. D. of Pa.—In Admiralty.

S. & W. WELSH
vs.
SHIP SARAH.

Interrogatories e. p. Respondents.

1. First. What is your age, what occupation do you follow, and where do you reside?

2. Second. Do you know the ship Sarah of Boston; and did you know the same and her condition as to sea-worthiness on the 19th day of May, 1855? If you answer in the affirmative, then state her general character and her condition as to sea-worthiness, and whether such a vessel was or was not in proper condition for engaging in the coffee trade? State also your means of knowledge in the premises?

3. Third. Into how many and what grades do the inspectors of the board of underwriters of Boston rate vessels? How was the said ship Sarah rated by the inspectors aforesaid on the 19th day of May, 1855?

4. Fourth. What is the import or meaning of the grade at which the ship Sarah was rated?

Cross-interrogatory.

In answering the second interrogatory, state whether you exam-

ined the vessel personally, in what manner you examined the said vessel, and at what time.

E. D. of Pa.—In Admiralty.

S. & W. WELSH
vs.
THE SHIP SARAH.

It is agreed that the answers to the within interrogatories and cross-interrogatory shall be taken before any United States commissioner in the city of Boston, and that the same when returned by him shall be of the same effect as if taken under a regular commissioner issued in this cause.

FALLON & SERRILL,
Proctors for Libellants.
ROBERT P. KANE,
Proctor for Respondents.

Philadelphia, December 15, 1856.

Answers of George W. Brown, of East Boston, Massachusetts, to the Interrogatories hereto attached.

1. To the first, he says:

My name is George W. Brown; my age is 41. I reside in East Boston, and my occupation is shipwright—mostly repairing vessels. I have worked at this business twenty-five years, and have a shipyard at East Boston.

2. To the second, he says:

I do know the ship Sarah, of Boston, and I did know her condition at the time inquired. Her condition then was good. I thoroughly overhauled her, and repaired her, and she was in good condition and perfectly sea-worthy for a three years' voyage, in the coffee trade or otherwise. I had also overhauled and repaired her two years before.

3. To the third, he says:

Into three grades, A 1, A 2, and A 3. The Sarah was rated "A 2, good."

4. To the fourth, he says:

It means an intermediate grade between A 1 and A 2. It means better than A 2.

And in answer to the cross-interrogatory, he says:

To the cross-interrogatory, he says:

I examined her personally in 1853; opened her, and took out all the bad wood there was in her. I bored her all over, put in thick streaks in the lower hold and between decks, and trussed her between the thick streaks and hanging knees.

In 1855, in May, I caulked part of her decks, and put new cat head and new bow chalk, and repaired her metal. At that time I

examined her to see if anything more was necessary, but that was all she wanted done to her.

GEO. W. BROWN.

Answers of Charles Pearson, of Boston, to the foregoing Interrogatories and Cross-interrogatory.

1. My name is Charles Pearson, my age is sixty-seven; I reside in Boston, and my business is marine inspector.

2. To the second, he says:

In May, 1855, I was on board the ship Sarah, of Boston, and I found that there was no material change in her character or condition since her repairs in June, 1853, which were very extensive. I saw her repairs at that time. I went on board for the purpose of examining her. They were then making some light repairs about her bow, and repaired her copper. I rated her the same as I did when she was repaired before, "A 2, good." I considered her sea-worthy, for the coffee trade or any trade.

3. Three principal grades, A 1, A 2, A 3. We have 1½, and 1½ good. She was rated "A 2, good."

4. To the fourth, he says:

That grade means that she was a good vessel. That she was of the second grade, and a little better. It means that she was sea-worthy, of course. It is very little different from A 1.

In answer to cross-interrogatory, he says:

I was on board of her in 1853, when she was repairing, a number of times, to see how she was built and how repaired. I saw her also when she was completed. I went on board of her again in May, 1855, and made an examination of her. I went into her, and saw no alteration in her condition worth noting, and continued her rate as before.

CHAS. PEARSON.

UNITED STATES OF AMERICA,
District of Massachusetts.

I, C. P. Curtis, jr., a commissioner in and for the district of Massachusetts, to take affidavits and bail in civil causes depending in the courts of the United States, appointed by the circuit court of the United States for the first circuit, under the acts of Congress in such case made and provided, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the witnesses are material to and live at a greater distance than one hundred miles from the place of trial of the cause for and in which said depositions are taken.

I further certify that the said depositions were by me reduced to writing in the presence of the witnesses, and that they subscribed the same in my presence, and that I have retained them for the

purpose of forwarding them under my own hand to the court for which they are taken, with this certificate of the reason of their being taken.

I further certify that I am not of counsel nor attorney to either of the parties in the cause, in and for which the said depositions are taken, or interested in the event of said cause, in and for which the said depositions are taken, or interested in the event of said cause.

In testimony whereof I have hereunto set my hand, this seventeenth day of December, in the year of our Lord eighteen hundred and fifty-six.

C. P. CURTIS, JR.,
Commissioner to take affidavits and bail of the Circuit Court of U. S., Mass. District.

Witness fees.....$3 00
Com'r fees..... 6 00

Abstract of Log.

Ship Sarah.—Voyage from Rio to Philadelphia.

1856.

May 17.—Left Rio this morning.

May 18, 8 p. m.—Light winds; cloudy; a little rain.

May 19.—Light winds and cloudy; 4 a. m. fresh breezes, with heavy squall; double reefed the top-sails; 8 a. m. more moderate, let the reef out the top-sails, and set the t'gallant; 10 a. m. tacked ship; at noon, clear weather; at 8 a. m. moderate; at noon, clear.

May 20.—8 a. m. light winds; 4 p. m. do.; 8 p. m. fresh breeze and squally, took in all light sails; 4 a. m. moderate, set t'gallant-sails.

May 21.—Commenced fresh breezes and passing squalls, in flying sails; 4 p. m. ditto; 6 p. m. heavy head sea; 8 a. m. fresh, ship laboring; noon, clear weather.

May 22, p. m.—Fresh and cloudy with heavy head sea; 4 p. m. do.; 8 p. m. squally, with heavy lightning; 4 a. m. more moderate—let the reef out the top-sails, and set the top-gallant-sails.

May 23.—Commenced fresh breezes and clear; 8 p. m. do.; midnight, do.; 4 a. m. moderate breezes.

May 24.—Fresh breezes and clear; 4 and 8 p. m. breezes and cloudy.

May 25.—Moderate breezes, fine; 4 and 8 p. m. do.; 4 and 8 a. m. steady and fine.

May 26.—Fresh and cloudy; 4 p. m. ditto; 8 p. m. fresh, with squalls in top-gallant-sail; 6 and 8 a. m. moderate, heavy head sea from the eastward.

1856.

May 27.—Light winds and cloudy; 4 and 8 p. m. ditto; 4 a. m. heavy rain; 8 a. m. and noon, moderate.

May 28.—Fresh and cloudy, rain squalls; same all day.

May 29.—Strong breeze, frequent rain; sun set, strong breezes and rain; same through the night.

May 30.—Comes in light breezes; same all day and night.

May 31.—Light breezes; same through the night.

June 1.—Come in with fine breezes; same all night.

June 2.—Light and clear.

June 3.—Light breezes and passing showers.

June 4.—Light breezes and clear weather.

June 5. ditto ditto.

June 6. ditto ditto.

June 7. ditto ditto.

June 8. ditto ditto.

June 9.—Light breezes and cloudy; 8 p. m. fresh and squally; 8 a. m. clear.

June 10.—Steady and clear.

June 11.—Moderate and fine.

June 12. ditto ditto.

June 13.—Moderate breeze and clear; 4 p. m. fresh, and passing squalls; 8 a. m. moderate.

June 14.—Moderate and clear.

June 15.—Wind variable and light; midnight, do., and heavy rain; 4 and 8 a. m. rainy and variable.

June 16.—Light breezes and cloudy; at noon, fresh breezes and squalls.

June 17.—Commences variable winds and squally weather; 8 p. m., rainy; 4 a. m., light and clear; 8 a. m., heavy rain; noon, light and variable.

June 18.—Light and variable till 8 p. m.; 8 a. m., rainy.

June 19.—Light winds and cloudy; at times, rainy.

June 20.—Light winds, and rainy.

June 21.—Light winds and heavy rains; 8 a. m., do., and clear.

June 22.—Light winds and rain up to 8 p. m.; 4 a. m., squally and heavy rain.

June 23.—Steady wind, and clear.

June 24.—Fresh and rainy, and squally up to midnight; then moderate.

June 25.—Steady and fresh breezes, and cloudy.

June 26.—Steady and fresh breezes, clear and cloudy.

June 27.—Fresh breezes, passing squalls; 8 a. m., more moderate.

June 28.—Fresh and clear, up to midnight, then passing squalls and rain; 8 a. m., clear and fine.

1856.

June 29.—Steady and moderate breezes, and clear weather.

June 30.—Moderate and steady breezes, and clear weather.

July 1.—Moderate breezes, and fine and pleasant weather.

July 2.—Moderate breezes and clear.

July 3.—Moderate breezes and cloudy.

July 4.—Variable winds and lightning, rainy.

July 5.—Moderate and cloudy till midnight, then squalls and heavy rain; at noon, moderate and clear, and all sails set.

July 6.—Light winds and clear; 4 p. m., squally; midnight, squally and lightning; 8 a. m., moderate, and all sails set.

July 7.—Fresh and clear; 4 p. m., squally, with heavy rain; ends with moderate and cloudy.

July 8.—Moderate breezes and clear weather till midnight, then squalls and heavy lightning, and afterwards heavy rain.

July 9.—Moderate breezes and cloudy till midnight, then squally and showers; noon, moderate and clear, and all sails set.

July 10.—Moderate and cloudy; 4 p. m., squally and rainy; 4 a. m., moderate and clear, all light sails set.

July 11.—Commences with moderate breezes and clear weather, people variously employed; at 4 p. m., do. weather; at 8 p. m., moderate breeze and cloudy weather, in royals, flying-jib, and all studding-sails; at 10 p. m., strong breezes and heavy squalls, in t'gallant sails, and double-reefed the top-sails; midnight, do. weather; 8 a. m., do. do., ship laboring much—a very high sea running; noon, do. weather; pumps duly attended. Lat. by obs. 34° 17′ N., long. do. 72° 56′ W., do. chr. 73° 12′ W.

July 12.—Commences with strong breezes, and thick rainy weather; at 4 p. m., do. weather, furled the mizzen top-sail, fore-sail, and close-reefed the fore-sail, ship laboring much; at 8 p. m., do. weather, a very high sea running, pump ship every 4 hours; midnight, do. weather; at 8 a. m., do. do.; at noon, heavy squalls and rainy weather. Lat. by obs. 36° 4′ N., long. do. 73° 50′ W., do. chr. 73° 56′ W.

July 13.—Commences with strong breezes and heavy squalls—sounded in 70 fathoms, no bottom; 4 p. m., increasing winds, furled the fore-sail and close-reefed the main-top-sail; at 6 p. m., hauled to the S. E.; and 8 p. m., strong heavy gales and very squally, a high sea running, ship laboring much, pump ship every 4 hours; midnight, do. weather; 4 a. m., do., wore ship; 8 a. m., more moderate, set the fore-sail and main-sail; at noon, do. weather. Lat. 37° 22′ N., long. ob. 73° 54′ W., do., chr. 72° 40′ W.

July 14.—Commences with moderate breezes and fair weather; at 4 p. m., do. weather, let all reefs out the top-sails, and set the t'gallant-sails; at 8 p. m., do. weather; midnight, do. weather; at 4 p. m. sounded in 50 fathoms, no bottom; at 8 a. m., do.

1856.
do.; at noon, light winds and clear, pumps duly attended to. Lat. 38° 3′ N., long. chr. 74° 5′ W.
July 15.—Light breezes and fine pleasant weather, all sails set; at 10 a. m., made Cape Henlopen; 1 p. m., got steamboat, and towed up the bay and river, 6 miles below Maridan island.
July 16.—Towed up to quarantine ground; clear weather.
July 17.—Ditto.
July 18.—Ditto.
July 19.—Ditto.
July 20.—Ditto.
July 21.—Ditto.
July 22.—Ditto.
July 23.—Ditto.
July 24.—Ditto.
July 25.—Ditto.
July 26.—Ditto.
July 27.—Ditto.
July 28.—Cloudy, rain shower in latter part of the day.
July 29.—Cloudy, rain in latter part of the day; towed up to Philadelphia.
July 30.—Clear, cloudy latter end of the day; no rain.
July 31.— do. do. about sunset.
August 1.—Clear, began discharging cargo; discharged 1,154 bags coffee.
August 2.—Clear; discharged 1,564 bags coffee.
August 3.—Clear, (Sunday.)
August 4.—Clear; discharged 463 bags.
August 5.—Rain; no bags discharged.
August 6.—Clear; discharged 1,991 bags; rainy weather later part of the day.
August 7.—Took out the rest of the cargo; clear weather.

Afterwards, to wit, on the 17th day of April, 1857, the court make and pronounce the following opinion:

S. & W. Welsh
vs. } In Admiralty.
Ship Sarah.

The Sarah was chartered at Rio de Janeiro to carry coffee to a port in the United States, and by a provision in the charter-party it was agreed that she should be consigned to the charterer's agents at the port of discharge. She arrived at Philadelphia, with her cargo damaged. The Messrs. Welsh made sundry advances on her account as inward consignees so nominated by the charterers, and giving her credit in the same capacity for the freight, charged her on behalf of the owners of cargo with the damage it had sustained. This done, and the vessel having been passed over to the

general representative of her owner, they file the present libel against her.

The claims asserted by them are of two classes—the first as consignees of the ship for advances; the second as representatives of the cargo for the damages it has sustained.

It is plain, however, that the claims which enter into the first class cannot be sustained in this proceeding. The lien of consignees is that of bailees at common law, and nothing else. It is at an end when they part with the possession. They retain, of course, their lien on the freight remaining in their hands, and as this in the present case is more than sufficient to reimburse them, they will not be affected by this denial of recourse against the ship.

The claim for damages sustained by the cargo on the voyage involves more difficulty. I am satisfied, on a very careful and through review of the evidence, that this vessel was unsea-worthy when she received her lading; and if this were a libel against the owners, under the representations of the charter-party, I should not hesitate about holding them liable. But the question upon this record is, whether the vessel can be charged specifically, under the circumstances, by process in rem.

That the ship is bound to the goods, as well as the goods to the ship, is a principle of the maritime law that founds itself in the necessities of commerce, "propter necessitatem navigantium." At the common law, the ship owner, as bailee of the goods, might detain them for their freight, just as any other bailee who had rendered service to the thing bailed. But the business of transportation by sea would have been cumbered with embarrassments at every step, if the ownership of the vessel and the ability of the owner to respond in solido had been questions to be discussed before the cargo could be trusted on board the ship. Hence the converse proposition found its way into the earliest codes of the sea, that the ship receiving merchandise is bound for its delivery, according to the contract of lading,

But it seems to me that this, like every other principle enunciated by human wisdom, must occasionally find its limit of application, and that this limit is reached whenever the evil of adhering to the principle is greater than the evil it seeks to avert or remedy. I know that a general rule ought not to be departed from for the sake of an insulated exception from its argument; but whenever a class of cases presents itself, in which the rule must work a wrong, there is the same reason for departing from the rule that there was originally for granting it.

So long as a ship is not absolutely derelict, there is some one near her, whose interest as well as duty it is to represent her—the owner while she is at home, the master on the high seas, the consignee in a foreign port. Each of these is for the time her next

friend to make contracts in her name, and to guard her rights against third parties. It is an important, if not an essential element in the policy which regards the ship as a thing endowed with moral capacity, bound by implied engagements, and responsible for delicts, that she should at all times have such a guardian; and it would be more than an ordinary exception from the regulated order of our legal systems to allow such a guardian to assume or assert rights, on his own behalf, at variance with those which he represents as trustee.

The fiduciary relation is inconsistent with adverse personal interests, and cannot be allowed to minister to their advancement or support. So far as I remember at the moment, there is no case in which the one capacity does not limit, or suspend, or control, or even annul the other.

Sometimes the personal capacity becomes absolutely merged in the representative, as when the trustee has made a profit by dealing with the estate; sometimes it is the personal which is held to service, as, when the trustee's dealing has resulted in a loss; sometimes, instead of holding the trustee to this retribution as far as misdeed, the law silently modifies his powers. The consignee of a ship may borrow, for her necessities, on the security of a bottomry bond, but he must not borrow from himself. The master may charge his ship for supplies, or for seamen's wages, but he has no lien on her for his own wages; and by the English law, and perhaps even by our own, he has none for his advances on her account. In all of these illustrations of the general principle, and in many others that might be cited, it is observable that it is the cestui que trust whose interest the law protects, wisely judging, that in the collision between the fiduciary and the personal, the personal can take care of itself and its own.

I cannot but approve the policy of this title of the law, and I am inclined to apply it to the case before me. From the moment when the Sarah reached her port of destination, the interests of the ship and of the goods were in collision. On the one side was the vessel, about to claim freight and to resist the claim for damage to cargo on the voyage; on the other there was the cargo, equally ready to make claim for the damages it had sustained, and to resist the claim for freight. I do not see how the two can refer themselves to the representative discretion of the same man. They are adversary throughout. Nothing, whether of fact, or proof or argument, can advance or fortify one without opposing and weakening the other. The relations are antagonistic.

It is true that the terms of a contract may unite them, modus et conventio, &c. It is competent to parties to refer themselves and their rights to any arbitrament which they may elect for the occasion, and they may even engage, however unwisely, by some special hypothecation, that the fiduciary may have recourse for his

adverse personal demands against the property he is trusted to guard against the rest of the world. All that I have to say is, that no such express hypothecation enters into the case before me, and that, in my view, the maritime law will not imply one from the facts. Further, I do not go. The ship owner and his consignee, or the ship owner and the owner of cargo, may litigate on the basis of their written contract; but it must be inter partes, not by a proceeding in rem.

In arriving at the conclusion that I must dismiss this libel, my leading difficulty has been in the fact that I have not met with a like question among the adjudicated cases, while I am assured by the counsel that such contracts are not uncommon among our merchants between ship owner and charterer. I should be loth to disturb any usage which the interests of trade have established; but I cannot help thinking it would be the sounder policy to modify the terms of the charter party whenever the parties are not content to rely on the personal responsibility of each other. At any rate, I cannot be the first to recognise in one person the conflicting offices of both parties to a cause.

Whereupon it is ordered and decreed, that the said libel be dismissed with costs. And thereupon, on motion of Mr. Serrill, leave is granted to appeal from the said decree to the next circuit court of the United States, in and for said district.

UNITED STATES,
Eastern District of Pennsylvania, ss.

I certify the foregoing to be a true and faithful copy of the record and proceedings of the district court of the United States, in and for the eastern district of Pennsylvania, in a certain plea, civil and maritime, therein lately depending, wherein S. & W. Welsh were the libellants, and ship Sarah, Sampson and Tappan, respondents.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court, at Philadelphia, this twentieth day of August, A. D. 1857, and in the eighty-second year of the independence of the said United States.
[L. S.]

CHAS. F. HEAZLITT,
Pr. Clerk, D. C.

Whereupon afterwards, to wit, on the ninth day of October, A. D. 1857, the appellant presents the deposition of Louis C. Madeira; which being read, is in the words following, to wit:

In the Circuit Court of the U. S., in and for the E. D. of Penn'a.

WELSH
vs.
THE SARAH.

Deposition of Louis C. Madeira, a witness produced and sworn on the part of the appellant, taken before Charles F. Heazlitt, United States Commissioner, at Philadelphia, September 30, 1857.

Mr. Serrill for libellant.

Mr. Wharton and Mr. Kane for respondent.

I am with the Messrs. Welsh; was with them when the Sarah arrived, consigned to them, as mentioned in the libel in this case. They were consignees of the cargo only, for sale on account of foreign parties. They had no personal interest beyond their commissions on the cargo. The vessel was consigned to them, under special agreement in the charter-party. Vessel to be consigned to charterer's agent at port of discharge.

Under this agreement in the charter-party, the captain places his vessel in charge of the consignees; they paying what money he may require for the disbursements of the vessel. We designate the dock at which she shall haul in; that we would do if we were only consignees of cargo; I mean the designation of the dock. If there was freight to different parties, we should collect it, charging 2½ per cent. for so doing.

Our connection with a vessel, under an agreement like this, would cease immediately on the discharge of the cargo.

John Devereux, who was agent for the owners of the vessel, took charge of the Sarah, after her cargo was out—James Devereux, not John.

State whether Mr. Devereux called on you in relation to any claim you had upon the vessel, and at what time, in relation to the issue of this attachment?

(Objected to as irrelevant.)

Mr. Devereux waited upon S. & W. Welsh, as the agent of the owners of this vessel, after the completion of the discharge of the cargo, as we had declined disbursing any more for the vessel, upon paying balance of freight; at that time Mr. Devereux represented the owners of the vessel; the vessel was then in the possession of the captain and Mr. Devereux, as agent for the owners. Nothing was agreed upon; the vessel was preparing to sail for Boston, when the libel was filed and attachment issued.

The vessel was in the possession and custody of Mr. Devereux and the captain at the time the libel was filed; our connection had ceased; she was in ballast for Boston at that time.

Cross-examined by Mr. Kane.

We declined to Mr. Devereux making any further disbursements on account of the vessel; we declined, in consequence of the damage to the coffee consigned to the Messrs. Welsh being greater than the amount of freight which was due by the Messrs. Welsh.

The first disbursement I had any knowledge of was for the payment of the crew; the inward pilotage and inward port charges

were paid by the Messrs. Welsh; there was another bill for provisions while the vessel was at quarantine—some of these were paid before the cargo was broken; there were advances to the captain; the tow-boat charges were paid, I presume. There was a survey on the hatches; it is generally the duty of the consignee to recommend a survey to the captain; and I presume it was recommended.

The ordinary commission of 2½ per cent. was charged upon these advances by the Messrs. Welsh; it was designed to be.

We presumed that either the vessel or the freight would be liable for these advances.

The vessel had left our wharf before this suit was commenced; she discharged at Walnut street, and was removed somewhere down town several days before the attachment.

I presume the vessel was moved by direction of the captain; after the cargo was out, the vessel was entirely within his control, he could do as he pleased.

I do not know that Mr. Devereux conversed with us as the agent of the vessel prior to her removal from the wharf at which she discharged. The facts, as well as I can recollect at this time, are, that the Messrs. Welsh declined to disburse further for the vessel, because of their claim for damage to the cargo being greater than the balance due on freight. In the absence of the owners Mr. Devereux acted, I believe, as the adviser of the captain. The vessel quitting the Messrs. Welsh was only the natural result of the circumstances I have just stated; the captain went to Mr. Devereux naturally, as the representative of the owners, to know what he had best do with her under the circumstances.

Re-examined.

As far as I recollect now, she had sufficient ballast in after the discharge of the cargo to ballast her to Boston.

Our direction as to the movements of the vessel ceased immediately upon discharging her cargo.

L. C. MADEIRA.

Sworn to and subscribed, September 30, 1857.

CHAS. F. HEAZLITT,
U. S. Commissioner.

AA

HENRY HARPER,
Broker,
Rio de Janeiro.

Charter-Party.

RIO DE JANEIRO, *on the 23d April*, 1856.

Five per cent. Commission on the freight is due on signing this—CHARTER-PARTY.

This charter-party witnesseth, that it is this day mutually agreed between F. E. Young, master of the American ship called the "Sarah," of the measurement of 454 tons, or thereabouts, now at anchor in this port, and Messrs. Naylor, Bros. & Co., of this city, merchants, that the said vessel being tight, staunch, and strong, and in every way fitted, equipped, and found in every requisite for the voyage, shall, with all convenient speed, receive in this port from the charterers or their agents four thousand bags of coffee of one hundred and sixty pounds net, which the said merchants do hereby bind themselves to ship, not exceeding what she can reasonably stow and carry, over and above her tackle, apparel, provisions, and furniture, and being so loaded shall therewith proceed to either New York or Philadelphia direct, or so near thereunto as she may safely get, and deliver the same in conformity with bills of lading, on being paid freight at the following rates, viz: If the vessel be ordered to New York, fifty cents per bag of coffee of one hundred and sixty pounds net; if to Philadelphia, fifty-five cents per like bag, with five per cent. primage in either case. The charterers to have the option of shipping up to two thousand bags more, at same rates of freight. No other cargo to be received on board. The vessel to be thoroughly and properly dunnaged and matted. (The acts of God, of kings and rulers, fire, pirates, and all other damages and accidents of the seas, rivers, and navigation, throughout the whole of this charter-party, always mutually excepted.)

The freight to be paid on right delivery of the cargo at the port of discharge, as customary.

The vessel to be consigned to the charterers' agents at the port of discharge.

The master to sign bills of lading as presented to him, without prejudice to this charter.

The cargo to be laden at this port with all possible dispatch, and discharged at the port of delivery, according to the custom of the respective ports.

Demurrage at the rate of per day shall be paid at port of discharge or loading, day by day, as the same becomes due, in case the vessel be detained beyond the laying days above mentioned.

Penalty for non-performance of this agreement to be paid by the party failing to the party fulfilling it, the sum of two thousand dollars.

In witness whereof we sign this contract.

F. E. YOUNG,
Per NAYLOR, BROTHERS & Co.,
EDWD. D. ESTILL.

Witness: HENRY HARPER, *Broker.*

Whereupon afterwards, to wit, on the twenty-sixth day of October, A. D. 1857, all and singular the matters being duly considered, and the arguments of the several proctors being heard, it is ordered and adjudged and decreed by the court, that the decree of the said district court be reversed, and that a decree be entered for the libellants, and that it be referred to the clerk as master to assess the damages.

Afterwards, to wit, on the 13th day of March, A. D. 1858, the master files his report; which being read, is in the words following, to wit:

921

To the honorable the Judges of the Circuit Court of the United States, in and for the eastern district of Pennsylvania.

The undersigned, to whom it was referred to assess the damages sustained by Mess. S. & W. Welsh, by reason of the damages to certain cargo lately laden on board the ship Sarah, the liability for which was lately decreed, respectfully reports: That he was attended on divers days between the second day of November, 1857, and the date of this report, by Messrs. Serrill and Fallon for the libellants, and by Messrs. Kane and Wharton for the respondents.

On the day first named, the libellants claimed as the net amount of damage, $2,382 95, which, with interest, amounted at that date to $2,556 90. At a subsequent meeting, to wit, on the 19th January, 1858, the libellants' proctors withdrew the said statement of damages, this said statement being founded in error. To this withdrawal Mr. Kane, for libellant, objected.

The libellants then submitted claim, as follows:

Amount of damage to 1,037 bags, as per paper No. 3...	$2,382 95
¼ per cent. damage on 6,000 bags.....	2,400 00

The second item being an additional amount claimed for certain damage.

It was alleged by the libellants, and sustained by the testimony adduced on their behalf, that the entire cargo of the said ship, say 6,000 bags, was damaged to the extent of ¼ per ct., by reason of the close proximity of the sound bags to those damaged; and that upon the sale of said coffee, supposed at first to be sound, a reclamation was made by the purchaser to that extent. The testimony of Mr. Field and Mr. Lewis has been taken to sustain this claim; and in the absence of any testimony or explanation by or on behalf of respondents, it would seem that such a damage might readily accrue.

The statement (No. 3 annexed,) in fixing the amount of damage to the lot sold at auction, claims certain expenses, storage, and insurance.....	$46 67
Porterage to store	32 50
	$79 17

These expenses, in the opinion of the commissioner, would have been incurred if the coffee had arrived sound, and would have entered into the computation, fixing the market value at 10½ cents per pound. They should be stricken out.

The estimate of the damage sustained may be stated thus:

The coffee sold, if sound, would be worth, cash.....	$16,393 50
But being damaged, sold at auction for, net.....	14,190 45
	2,203 05

At the store certain expenses were incurred, incident to the damaged condition of the coffee, bags, &c., amounting to	$100 73	
		2,303 78
The damage to the whole cargo being estimated at ¼ per cent. on 6,000 bags, each bag weighing 159 pounds, by average, would be $2,385 00	$2,385 00	
With interest from		4,688 78

All which is respectfully submitted.

GEORGE PLITT,
Commissioner.

May 13, 1858.

PHILADELPHIA, *August 4th*, 1856.

We hereby certify, that the fair market value of the sound coffee per "bark Sarah," from Rio de Janeiro, is this day ten and one-quarter cents per pound, less one per cent. on four months' credit.

FIELD & KEEPRULE,
Brokers.

Endorsed: "Paper No. 1."

Ex'd—A. H. W.

Account of whom it may concern.

By Order—

S. & W. WELSH.

Philada., Aug. 14, 1856.

1	29 bags coffee.....4483	90	4393	8½	$373 41
2	24 3802	76	3726	9⅛	340 00
3	14 2248	45	2203	9½	209 29
4	11 1742	35	1707	8½	145 10
5	9 1390	28	1362	8¾	119 18
7, 6	4 638	13	625	9¼	57 81
8	11 1734	35	1699	9	152 91
9	6 921	18	903	8⅞	80 14
10	7 1122	22	1100	8½	93 50
11	18 2807	57	2800	9½	266 00
12	13 2014	40	1974	8⅝	170 26
13	9 1452	29	1423	8¾	124 51
14	6 966	19	947	9¼	89 97
15	24 3861	77	3784	8⅝	326 37
16	6 896	18	878	9	79 02
17	31 4941	99	4842	8½	411 57

922

Account—Continued.

18	6 bags coffee.....	956	19	937	9 1/8	$85 50
19	8	1251	25	1226	8 3/4	107 28
20	13	1998	40	1958	9 1/4	181 12
21	6	968	19	949	8 3/4	83 04
22	22	3188	64	3124	9 1/8	285 07
23	16	2521	50	2471	9	222 39
24	12	1892	38	1854	9 3/8	173 81
25	40	6199	124	6075	8 3/4	531 56
26	12	1927	39	1888	9 3/8	177 00
27	36	5708	114	5594	9	503 46
28	19	3032	61	2971	9 5/8	285 96
29	8	1271	25	1246	9	112 14
30	11	1719	34	1685	9 1/4	155 86
31	28	4441	89	4352	9 1/4	402 56
32	26	4103	82	4021	9 5/8	387 02
33	25	3843	77	3766	9 3/4	367 19
34	23	3534	71	3463	9 1/8	316 00
35	9	1323	26	1297	9 1/4	119 97
36	25	3881	78	3803	8 3/4	332 76
37	7	1034	21	1013	9 1/4	93 70
39, 38	5	702	14	688	9	61 92
40	71	11000	220	10780	9	970 20
41	43	6734	135	6599	9	593 91
42	27	4198	84	4114	9	370 26
43	11	1767	35	1732	9 3/4	168 87
44	9	1463	29	1434	9 1/8	130 85
45	27	4249	85	4164	9 1/8	379 97
46	26	4069	81	3988	9 1/8	363 90
47	5	775	15	760	9 3/8	71 25
48	8	1284	26	1258	10	125 80
49	6	869	17	852	9 3/8	79 88
50	42	6591	132	6459	9	581 31
56	10	1533	31	1502	9 1/4	138 94
59	17	2687	54	2633	9 1/8	240 26
60	15	2322	46	2276	9 1/8	216 22
62, 61	9	1422	28	1394	9 3/8	130 69
63	7	1054	21	1033	9 5/8	99 43
64	11	1612	32	1580	9 1/4	146 15
65	25	3826	77	3749	9 1/4	346 78
66	5	751	15	736	9 1/4	68 08
67	71	9353	187	9166	9	824 94
68	10	1432	29	1403	9 1/4	129 78
69	20	2657	53	2604	9 5/8	250 64
						$14,452 46

Account—Continued.

Commision	$144 52		
Duty	72 26		
Advtsg., weighing, cust'y, &c	45 23		$262 01

Endorsed: "Paper No. 2."

Statement of loss on 1,037 bags coffee, damaged per ship Sarah, on her passage from Rio de Janeiro, owing to the upper works of the vessel not being calked, as per surveyor's report.

1,037 bags, if sound, would have weighed by average on landing, ea. 159 lbs. net—

Say 164,883 lbs. *a* 10¼			$16,900 51
Less 3 p. c. disct. for cash			507 01
			16, 93 50
The above, with 17 bags spillings, weighing 158,963 lbs., (the contents of some of the bags were so badly damaged that they had to be thrown overboard,) sold at auction for		$14,190 45	
Deduct—expenses for bags, mending bags, labor in gathering loose coffee and arranging for auction sale	100 73		
One month's storage and fire insurance	46 67		
Porterage to store	32 50		
		179 90	14,010 55
Cash			$2,382 95

E. & O. E.
Philadelphia, August 16, 1856.

S. & W. WELSH.

Endorsed: "Paper No. 3."

WELSH
vs.
THE SARAH.

Am't damage		$2,382 95
Int. to this date		173 95
		$2,556 90

923

Nov'r 2, 1857.

Endorsed: "Paper No 4."

Am't damage to 1,037 bags, as per paper No. 3	$2,382 95
¼ pr. ct. damage on 6,000 bags	2,400 00
Total	4,782 95

In the Circuit Court of the United States for the eastern district of Pennsylvania, in the third circuit.—Of April session, 1857, No. 13.

S. & W. Welsh
vs.
The Ship Sarah. } Appeal from D. C.

To the Judges of the Circuit Court aforesaid.

And now, 2 November, 1857, Louis C. Madeira, being duly sworn, says, that paper marked No. 1 is the broker's certificate of the valuation of the sound coffee at the time of the arrival of the vessel; upon the cargo of which vessel, Messrs. S. & W. Welch had previously advanced the sum of $73,238 88, and made insurance on the same—valuing the coffee at $17 per bag.

Paper No. 2 is the auctioneer's account of sales of the damaged coffee, net proceeds $14,190 45.

Paper No. 3 is the calculation of deponent, and statement of the amount of loss and damage to the coffee aforesaid, net proceeds $2,382 95.

Paper No. 4 is the total claim of the amount of damage, with interest to date, $2,556 90.

November 10, 1857.

Mr. Serrill.

Mr. Wharton.

Samuel C. Cork, Aff.

Paper No. 2 shown witness. This is the ac. sales rendered by our house. The damaged coffee was sent to us for sale by S. & W. Welsh. It was public sale by auction; that is a mode very generally adopted for the sale of damaged articles. My experience has been that this is the better way to get better prices than any private sale. I have been an auctioneer over 20 years. The reason I assign is, that we bring in competition the small buyers, whom the brokers do not know, and thus the price is greater, coming as they do in competition with the large trade. My recollection is very clear as to this sale; we considered it a good sale—brought full prices. I do not think that more could have been got at private sale.

Cross-ex'd by Mr. Wharton.

The terms of sale was cash; the usual terms of selling damaged goods.

Adj'd till 13th, at 4 p. m.

November 13, 1857. Present, Mr. Fallon.

Adj'd till Monday next, at 12 m.

Monday, 16 Nov'r, 1857. Present, Mr. Fallon, Mr. Kane.

Adj'd till Tuesday 24th, at 4. p. m.

January 19, 1858. Present, Mr. Serrill, Mr. Kane.

Mr. Serrill. We want to prove that all the coffee was injured and the market value lessened by the condition of part of the bags, which have been referred to as the damaged bags—the fact being that all the coffee was injured.

Mr. Kane objects to the admissibility of the testimony.

The libellant withdraws from the evidence paper No. 4, being statement of damages—the amount being $2,556 90; the calculation being founded in error.

Mr. Kane objects to the withdrawal.

Samuel Field, being recalled, says:

Q. How many bags were there in this cargo?

600 bags, if my memory serves me.

How many of those bags have heretofore referred to as damaged bags?

It is in the account there 1,037 bags, I believe.

Q. Be good enough to state whether the residue of the 6,000 bags were injured; and if so, how, and to what extent?

In my judgment it was injured by the absorption of moisture from the water, which got into the hold of the vessel and came in contact with the other bags, caused the bean to swell and become musty—and spots in parts of the bags which were called sound. It makes the coffee of a lighter shade. I should think the damage was to the extent of ¼ of a cent per pound on the whole—that is, outside of the damage done to the 1,037 bags.

Cross-ex'd.

I am not able to say when the Sarah arrived; I think it was about the 1st July, 1856. I examined the coffee first about the neighborhood of the 25 or 26 of July—some time after the coffee was put into store. The examination was made by me—not by the bags but by the samples presented to me. I am a merchandise broker. The samples of coffee were brought to us for sale by Messrs. S. & W. Welsh. The examination was made at our counting-house. The coffee was, I believe, stored in Messrs. Welsh's store. My attention was afterwards called to it in the store from the fact that some which was musty was sold as good,

and for which the buyers made a claim. The number of bags was on each sample. The cargo was marked with one letter, with numbers from one to sixty-six. I refresh my memory from a memorandum of sales taken from our book. The result of our sales was 5,090 bags. We examined samples of the whole cargo, 6,000 bags. I did not make any statement or report in writing of the condition of the samples of bags. Some of the coffee which was sold by the Messrs. Welsh as sound turned out to be damaged. I did not unite in any survey of cargo on board the vessel.

Q. You judged, then, of the condition of the coffee from the samples presented to you; and it was from the statement of the Messrs. Welsh, or those in their employ, that the samples presented to you were taken from among those of the Sarah, together with the number of bags of each sample. Am I correct in this?

A. No, sir. If my memory serves me, the samples of this coffee, after perhaps the sale of some 1,800 bags, which was made by ship samples, were drawn from the bags by the clerks in our employ.

Q. Have you any other explanation to make in connection with your previous answer?

A. No, sir. A shade very frequently in the appearance of coffee will make a difference of a $\frac{1}{4}$ of a cent a pound.

Q. Did you get at the damage by a comparison, or the price brought by that coffee with the price brought by coffee not damaged, sold at that time?

More by the objection that was raised on the part of the trade to finding coffee damaged which was sold to them for sound, and upon which they made reclamations, that prevented them giving in them about $\frac{1}{4}$ of a cent for the coffee.

Q. Was the damage to this coffee of which you have spoken to be detected by inspection?

It was to be detected by examination—that is, by boring every bag of coffee in the parcel. Part of it would show a difference in the usual ordinary run—either by a musty bean or a swollen white one—color changed.

Q. Do you know of any sales of sound coffee about the time of the discharge of the Sarah?

I do.

At auction?

No; private sales made by ourselves.

For cash?

Generally sold on credit, for such paper as would realize cash—4 months' credit. I don't know of any sales by auction of coffee in the same condition. We made a sale of coffee in about the same condition as this about the same time as this; it was on credit.

We made sales of 5,090 bags. I don't know how much of that was subject to reclamation. It was made direct to the Messrs. Welsh.

Mr. Fallon. I understood you to say you first sold the coffee from the ship samples; what are ship samples?

Samples of each mark put up in a box, at Rio, and sent as a sample of the cargo. I sold about 1,600 bags by those samples. Those samples were perfectly sound. I judge the reclamation was on the 1,600 bags; and I know part of it was on the other, too. The samples were got from the bags after we sold the 1,600, because it is always customary after the bags go in store to draw the samples from the bags. I suppose we compared the ship samples with the bag samples, though my memory does not serve me. My certificate of 10¼ cts. per pound was based upon the value of the coffee in the condition as drawn from the bags, after it had been put in store.

Q. Then, am I to understand or not that the coffee would have been worth 10½ cts. instead of 10¼ cts. if it had come perfectly sound?

A. That is about the difference between the value of coffee affected by dampness and must, and one that is not.

Q. Why did you not make that distinction when you gave the certificate?

I did not know that there was any difficulty at the time it was presented to us for a market value.

Mr. Serrill. There is about 162 lbs. of coffee in a bag.

SAMUEL FIELD.

Mr. Charles S. Lewis, sw.

I am a merchant; have dealt in coffee for many years. I don't know the condition of the cargo of the Sarah. Coffee is an article easily damaged.

Q. Would the damage from water of about $\frac{1}{6}$th of a cargo of coffee, to the extent of rotting the bags and the bean, on a long voyage, such as that from Rio, injure by contact or otherwise the rest of the coffee which was not actually wet?

(Mr. Kane objects as irrelevant, and as not being sufficiently explicit to enable an expert to give an answer.)

Yes, sir.

Q. To the best of your knowledge, to what extent in money would the whole of what I may call the sound part of such a cargo be injured, under the circumstances mentioned?

I should think from ¼ to ⅜ of a cent per pound, to that part not actually having water upon it.

Cross-ex'd.

Q. What would be the cause of the damage to the part of the cargo not injured by water?

From the dampness, vapor, and exhalations caused *caused* by the water that damaged the $\frac{1}{6}$ referred to. It is what we call sweat.

Now, would not the amount of damage from sweat depend, to some extent, upon the length of time to which the coffee was exposed to it?

It would.

Q. And somewhat upon the mode in which the coffee was stowed?

I know of but one way of stowing coffee.

Q. Would not the damage by sweat to a part of a cargo not brought in contact with water depend, to some extent, upon the degree to which the unsound portion of the cargo was rotted or injured, and upon the length of time to which it had been exposed to the exhalation?

Yes, sir.

In your answer to the second question in chief, to what extent did you assume the cargo of coffee to have been damaged?

The whole $\frac{5}{6}$ths might be damaged. What I mean to say is, that in a cargo of 6,000 bags of coffee, if $\frac{1}{6}$th of it is damaged by actual contact with salt water, it is possible that the whole $\frac{5}{6}$ths might be damaged.

In your answer to that question, what did you assume to be the condition of the $\frac{1}{6}$th of the cargo damaged by water?

Badly damaged.

The entire $\frac{1}{6}$th, sir?

Yes, sir; more or less of it.

So as to rot the bag and the bean?

Yes, sir.

Give us the one mode of stowing coffee.

It is stowed in bags as close as it can be put, and the bags in bulk as close as they can be put.

CHAS. S. LEWIS.

Lewis C. Madeira, recalled:

Q. State, if you please, on what basis the surveyor's certificate is made?

As far as I know, it is usually upon the appearance of the outside of the package, or anything else.

May not, therefore, a good deal of damaged cargo escape the certificate of the surveyors?

I never knew them to break into a package, unless a special survey was called for.

Do you know if the sound bags were opened in this case?

I think not. It was only extended to those bursted open.

L. C. MADEIRA.

Afterwards, to wit, on the 26th day of May, A. D. 1858, the respondents, by their proctors, file exceptions to the master's report; which being read, are in the words following, to wit:

C. C. U. S.

WELSH
vs.
THE SARAH.

Exceptions of Respondent to the Report of the Commissioner.

1. That the claim for damages made by the libellants, and allowed by the court, was one which the commissioner, under the order of reference and the pleadings in the cause, could not consider.

2. That the damages awarded by the commissioner are excessive, and not warranted by the evidence taken before him.

G. M. WHARTON,
R. P. KANE.

May 20, 1858.

Whereupon afterwards, to wit, on the 17th day of July, 1858, this cause came on to be heard upon the exceptions to the master's report; and having been duly considered, and the arguments of the several parties heard, it is ordered and adjudged by the court that the charge of ¼ of a cent per pound on the 6,000 bags of coffee, amounting to $2,385, be disallowed, and judgment be entered for the libellants for the sum of $2,302 78, with leave to defendants to set off the balance due on freight and interest on the balance from the institution of this suit, viz., 14 August, 1856. If the defendants do not elect to make such set off, the interest on the whole amount to be calculated from that date.

Afterwards, to wit, on the twenty-third day of July, A. D. 1858, the respondents file their election under the decree of court, in the words following, to wit:

C. C. U. S.—Appeal in Admiralty.

S. & W. WELSH
vs.
THE SARAH.

The respondents elect, under the decision of the court in this case, to set off the balance due on freight, with interest thereon from the 14th of August, 1856, as below:

1856. Dr.

Aug. 20. To amount of disbursements, as per acc't rendered, y. m. d.—

Due July 31st, 1856, 1 11 20..... $251 33

$2,123 94

1858.		
July 20. To amount damages as awarded—		
Due Aug't 14, 1856, 1 11 6.....	267 34	
		$2,303 78
July 20. Interest to date.....		518 57
		$4,946 29
1856. Cr.		
Aug. 14. By amount of freight on coffee—		
Due July 31, 1856, 1 11 20.....	410 02	
		$3,465 00
1858.		
July 20. By amount interest to date.....		410 02
		$3,875 02
Amount of decree, being balance due S. & Wm. Welsh		$1,071 27

The election to set off as above being made without any waiver of the right of the respondents to appeal.

G. M. WHARTON,
ROBERT P. KANE,
Proctors of Respond'ts.

Afterwards, to wit, on the 31st day of August, 1858, the exceptions to the report of the commissioner assessing damages being considered by the court, and the appellants having elected to set off the amount of freight, due as per account and statement filed, it is ordered and adjudged that the libellants, S. & W. Welsh, do recover against the respondents the sum of one thousand and seventy-one dollars and $\frac{27}{100}$, (1,071 27,) with interest from the 20th July, 1858.

And thereupon, on the tenth day of September, 1858, in open court, the respondents pray leave to appeal from the said decree to the Supreme Court of the United States, at the city of Washington; and enter security, as follows:

Know all men by these presents that I, James Devereux, am held and firmly bound unto Samuel Welsh, John Welsh, and William Welsh, trading as S. & W. Welsh, in the sum of five thousand dollars, lawful money of the United States, to be paid to the said Samuel & W. Welsh; to which payment, well and truly to be made, I bind myself, my heirs, executors and administrators, firmly by these presents. Sealed with my seal, and dated at Philadelphia, this twentieth day of September, A. D. one thousand eight hundred and fifty-eight.

Whereas George R. Sampson and Lewis W. Tappan, merchants